

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Gene W. Wu, M.D.

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Docket No. MPS 65-0603

AMENDED AGREEMENT AS TO MEDICAL PRACTICE

NOW COME Gene W. Wu, M.D., (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Gene W. Wu, M.D., holds Vermont Medical License Number 042-0009913, issued by the Board of Medical Practice on August 24, 1999. Respondent, an anesthesiologist, holds privileges at the Copley Hospital of Morrisville, Vermont.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. § 1353 and other provisions of Chapter 23 of the Vermont statutes.

I. Background.

3. Respondent took a voluntarily leave of absence from practice activities in June 2003, due to medical disability. Respondent subsequently signed a Cessation of Practice Agreement with the Board, entered and effective August 6, 2003, due to his medical disability and ongoing treatment. Respondent's condition now has improved, and he appears to be able to resume limited practice responsibilities.

4. Based on his current medical condition, his treatment needs, the advice of his treating doctors, and his concern for the welfare of his patients, Respondent has determined after consultation with his colleagues that he shall voluntarily enter into this amended

agreement with the Vermont Board of Medical Practice. The instant agreement is intended to serve for an interim period as a means of permitting Respondent to return to the practice medicine, on a limited, trial basis. Thus, Respondent has determined that he will enter into this agreement with the Vermont Board of Medical Practice so as to set forth in writing the terms for such a limited, trial return to the practice of medicine.

5. Respondent acknowledges that he has been offered the opportunity to obtain an attorney and receive legal advice and counsel regarding this matter. He agrees and fully understands that by executing this document he is waiving the necessity of any proceedings, findings, and order by the Board of Medical Practice. Thus, Respondent voluntarily and knowingly agrees to the terms and conditions set forth herein.

6. Respondent understands that subsequent to the pendency of this amended agreement he may be required to enter into other, further terms and conditions as to his practice of medicine and that these may be set out in a later Board order. Such order may require Board continued monitoring of Respondent's medical condition and approval of his ongoing treatment and care. Respondent has indicated his desire to cooperate fully with the Board in this regard. The parties fully contemplate that Respondent and the Board will enter into a subsequent agreement providing for his continuing practice of medicine in the near term, consistent with his treatment and medical needs.

7. The parties are entering into the instant Amended Agreement, which is intended to serve as an interim means of facilitating Respondent's return to some limited practice of medicine and ensuring the safety of patients. In the unlikely event that circumstances may require such action, Respondent expressly agrees and acknowledges that

upon any written request to him by the Vermont Board of Medical Practice he shall immediately cease and desist from any and all practice of medicine and any and all prescribing, no matter how limited and regardless of location. Any such request may be made by the Board, in its sole discretion, at any time, and for such reasons, if any, as the Board may deem sufficient in its sole discretion.

II. Conditions of Licensure.

8. Respondent's license to practice medicine hereafter shall be designated as "CONDITIONED", and Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth below, wherever he may practice, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

A. Medical Prognosis.

9. Respondent's limited return to the practice of medicine is based upon the mutual agreement of Respondent, his colleagues, his treating practitioners, and the Board with regard to his improved medical condition. In the opinion of two different practitioners, it now appears to be safe for Respondent to return to some limited practice of medicine, which both regard as likely to be beneficial to his well-being. Respondent agrees that he shall undergo such further assessment or evaluation as might be required by the Board, in its sole discretion, prior to or following his return to the practice of medicine.

B. Continued Treatment.

10. Respondent agrees to pursue in good faith and without interruption such care and treatment of his medical condition as may be recommended to him by treating

professionals. Respondent shall bear all costs of care and treatment, assessment and/or evaluation, and monitoring and reporting but shall be permitted to share such costs with third parties, subject to Board review and approval.

11. Respondent agrees that he shall execute any and all waivers that may be required for the Board, its staff, or agents to review any and all assessments, evaluations, diagnoses, records, or reports regarding his care and treatment and his medical condition. Respondent already has signed a current general authorization for the release of his medical records and information to the Board. Respondent agrees not to terminate such authorization and to execute such further authorizations for the release of his medical records and information as may be required by the Board. Consistent with this authorization Respondent also agrees that the Board or its agents may communicate orally to obtain information from practitioners involved in the care and treatment of Respondent.

C. Due Process; Further Agreements.

12. Respondent shall retain all rights to due process regarding the status of his medical license, his medical condition, and determination of his ability to practice medicine safely. The parties agree that Respondent may apply for modification or relief from the terms and conditions of this agreement, with regard to his practice of medicine, if and when he and his treating practitioners agree that he is able to resume an increased level of medical practice.

13. The Board agrees that this agreement may be further modified at a later date, provided that the Board is satisfied that Dr. Wu continues to be medically able to practice medicine safely and meets all other usual and customary requirements for licensure and practice as a physician in the State of Vermont. Respondent also understands and agrees that

his compliance with the terms and conditions herein and with the recommendations of those providing care and treatment to him may be considered in any subsequent proceeding before the Board regarding his license.

14. Consistent with Paragraph 12, above, Respondent agrees that the Board, in its sole discretion, may consider and approve a petition from Respondent at a later date for modification or relief as to the terms herein, should the circumstances of Respondent's medical condition or treatment so warrant. Respondent expressly agrees that he shall promptly sign all consents and/or waivers of confidentiality that may be required to permit complete disclosure of information required so that the Board may monitor his ability to practice medicine safely and may consider any subsequent petition from Respondent.

D. Limited Return to Practice.

15. Pursuant to the terms of this amended agreement Respondent may initially return to the practice of medicine on a limited basis. The parties agree that such practice by Respondent shall not exceed a total of six hours per week, regardless of location. The parties agree that the total number of hours to be worked per week shall not require Dr. Wu to be present at the hospital in excess of three days per week. Following Respondent's initial return to practice, he agrees that he shall not practice absent the immediate presence of another licensed physician. The parties agree to review the terms set forth in this paragraph from time to time.

16. The parties agree that Respondent's participation in meetings and conferences related to his hospital duties shall not be deemed to be the practice of medicine and shall not be counted against the maximum total number of hours to be worked per week. However,

Respondent agrees that his participation in such non-practice meetings and conferences shall be limited and that he shall endeavor with his employer and colleagues to reasonably limit such involvement on his part. Such non-practice matters shall not be permitted to interfere with Respondent's continued treatment and well-being.

E. Practice Site and Employment.

17. Respondent agrees that he shall practice medicine only in a structured group setting in which he shall have frequent and regular contact and interaction with other physicians. Respondent agrees that while so employed he shall maintain regular communication with his Supervising Physician. See also Paragraph 18, below. Respondent agrees that he shall petition in advance for Board approval of any proposed change of employer, practice site, or work schedule. Such petition shall be in a form and manner satisfactory to the Board.

F. Supervising Physician.

18. Within five days of Board approval of this Agreement, Respondent shall file a written petition with the Board requesting approval of a Vermont licensed Supervising Physician for the practice location at which the Respondent works. The petition shall include the curriculum vitae of the proposed Supervising Physician(s) and shall be in a manner and form to be determined at the discretion of the Board. It is the responsibility of Respondent to promptly seek written Board approval of the proposed Supervising Physician and to maintain communication with the Board until written approval has been provided by the Board.

19. The proposed Supervising Physician shall be considered provisionally approved for the period of time between the filing of the petition and the Board's actual

approval or denial of the petition. It is the responsibility of the Respondent that the provisionally approved Supervising Physician(s) comply with any reporting requirements. The Supervising Physician shall be fully informed of the terms of this agreement. Respondent shall provide a copy of this agreement to the Supervising Physician.

20. The Supervising Physician(s) shall meet in person with Respondent at least three times each week and shall discuss Respondent's care of patients, any problems arising with respect to patient care, and Respondent's treatment and ability to practice medicine safely. Such meetings shall be of such duration and scope as to permit substantive communication regarding Respondent's practice activities. Respondent agrees that other practitioners within his work setting may also communicate with the Supervising Physician and with the Board regarding the matters identified above.

21. The Supervising Physician shall submit at least quarterly written reports to the Board, regarding Respondent's practice activities and Respondent's ability to practice medicine with reasonable care, skill and safety. Such written reports shall commence three (3) months from the date of the Board's approval of this Agreement and continue for so long as this agreement remains in effect or until the Supervising Physician ceases to provide the services described herein.

22. If the Board does not approve or withdraws its approval of the Supervising Physician proposed by Respondent, Respondent must confer with the Board and thereafter propose another Supervising Physician. Respondent may not practice medicine in any location without a Supervising Physician as described herein.

G. Monitoring.

23. Respondent agrees to propose by petition the name of a physician who will serve as a consultant practitioner and who will assist the Supervising Physician by directly observing and monitoring Respondent's care of patients and his ability to practice medicine safely. Respondent expressly understands and agrees that the Board, in its sole discretion, may withdraw its approval of any such arrangement at any time. Such consultant, if approved, shall communicate regularly and directly with the Supervising Physician regarding Respondent's ability to practice medicine and to do so safely. Respondent agrees that the Board may communicate with any such consultant practitioner freely and at any time regarding Respondent's care of patients and ability to practice medicine safely. The proposed consultant practitioner shall be considered provisionally approved for the period of time between the filing of the petition and the Board's actual approval or denial of the petition.

H. Structured Group Setting.

24. Any such group practice or institution, as referred to in Paragraph 17, above, shall be considered provisionally approved upon notice and petition from Respondent, subsequent to actual approval or disapproval, in the sole discretion of the Board. Respondent agrees to present to the Board a petition identifying the location where he seeks to practice, his proposed employer, and proposed work schedule. He agrees that he shall not see patients or practice at any other location without the prior approval of the Board. Moreover, Respondent agrees that he shall not practice medicine in any form or manner outside the scope of his employment agreement or affiliation with such group practice or institutional employer and his assigned duties there.

25. The parties expressly agree that Respondent's continuing employment at the Board-approved group practice or institutional employer is a material term of this Agreement. The parties agree that any interruption or cessation of Respondent's employment relationship with such group practice or institutional employer shall constitute a circumstance of non-compliance by Respondent with the terms and conditions of this agreement and shall require Respondent voluntarily and immediately to cease all practice activities in the State of Vermont, pending further order of the Board.

26. Respondent expressly agrees that he shall comply fully with the terms of any and all contractual or practice agreements with his employing institution. Respondent agrees that the terms and conditions of all such agreements shall be incorporated by reference as required elements of this agreement with the Board.

I. Medical Care.

27. Respondent agrees that he shall fully and in good faith participate in all required medical treatment. Respondent agrees that he shall immediately cease and desist from the practice medicine if any of his treating practitioners deem such practice by him to be inconsistent with patient safety or Respondent's course of treatment and well-being.

IV. Other Terms and Conditions as to Implementation.

28. The parties agree that this Agreement shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards. Any such reporting shall clearly indicate that this Agreement is a non-disciplinary matter.

29. Respondent agrees that he has read and carefully considered all terms and conditions herein as to interim disposition of this matter, and agrees that these may be adopted as an enforceable order of the Board, pursuant to 3 V.S.A. § 809(d) and 26 V.S.A. § 1353(4), and agrees to accept and be bound by these until such time as he may be expressly relieved of these or they are modified, in writing, by the Board.

30. This Cessation of Practice Agreement is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this agreement, the entire agreement shall be considered void. However, if this agreement is deemed acceptable, the parties request that the Board enter an order adopting the terms and conditions set forth herein. Respondent agrees that the Board of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein, pursuant to 26 V.S.A. §1354(25) or other statutory authority.

Dated at S. Burlington, Vermont, this 27th day of August, 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at S. BURLINGTON, Vermont, this 27 day of AUGUST, 2003.

Gene W. Wu, M.D.
GENE W. WU, M.D.
Respondent

FOREGOING, AS TO GENE W. WU, M.D.,
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

William *David H. Brown*
David H. Brown *Lenis C. Blowers*
Katherine M. Ready *Shawn L. Nicol*
John J. Murray
Shawn L. Nicol
Shawn L. Nicol
Margaret Fink Martin

DATED: 9/3/03

ENTERED AND EFFECTIVE: September 3, 2003